

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CT102 LLC d/b/a Metro Motors and H.
Jeffrey Baker,

Plaintiffs,

v.

Civil Action No.:1:20-cv-356

Automotive Finance Corporation d/b/a AFC;
NextGear Capital, Inc; Southern Auto Sales,
Inc., AUTOTEC, LLC d/b/a AUTOACCESS,
LLC; Manheim, Inc.; and ADESA, Inc.

Defendants.

AFFIDAVIT OF DORCAS MORRIS

Dorcas Morris, being duly sworn, and for her Affidavit states as follows:

1. I, Dorcas Morris, am more than eighteen (18) years of age and a resident of the State of Georgia, have personal knowledge of the facts set forth herein, and am otherwise competent to testify to the matters set forth herein.
2. I am currently employed as a Senior Paralegal at Cox Enterprises, Inc. which, among other things, provides certain legal department support to Manheim Remarketing, Inc. (“Manheim”), including tracking the current and historical versions of the Manheim’s Terms and Conditions that are also publicly posted on Manheim’s website.
3. The information contained in this Affidavit is true and correct to the best of my personal knowledge and belief.
4. In my role as Senior Paralegal, I am generally familiar with the books and records and business practices of Manheim as it relates to Manheim’s mechanisms for maintaining and updating Manheim’s Terms and Conditions and related policies that govern the business relationships with Manheim’s customers.

5. In my role as Senior Paralegal, it is my duty and business practice to print and archive copies of the Manheim Terms and Conditions as revised versions of the Terms and Conditions are issued.

6. The process to archive Manheim Terms and Conditions upon the issuance of revised Terms and Conditions was for me to print the existing Terms and Conditions available on the Manheim website and place in a file. The date of printing appears on the upper left side of the printed Manheim Terms and Conditions.

7. On April 9, 2018, I printed Version 1.6 of the Manheim Terms and Conditions, as attached hereto as **Exhibit A**.

8. I swear under the pains and penalty of perjury that the foregoing is true and accurate to the best of my knowledge.


DORCAS MORRIS

STATE OF GEORGIA)
COUNTY OF FORSYTH) ss.
)

SUBSCRIBED AND SWORN TO before me this 15 day of October,

2020, by Dorcas Morris.


NOTARY PUBLIC

My commission expires:

01-22-2023



Exhibit A

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Manheim Terms and Conditions

English |Français|Español

Updated: Sept 17, 2015

Welcome to Manheim, the world's largest provider of vehicle remarketing services. By attending any of Manheim's auctions or using any of Manheim's services, whether at a Manheim location or online, you agree, for yourself, your dealership, your company, and your representatives (collectively, "you"), to abide by the following terms and conditions, as amended from time to time by Manheim:

1. Manheim: These terms and conditions shall benefit Manheim Remarketing, Inc. and its various subsidiaries and affiliates, including the various Manheim auto auctions, Cox Automotive, Inc., and others (collectively, "Manheim," "we," "our," or "us"). These terms and conditions are in addition to, and not in lieu of, any more specific agreements you may have or make with Manheim (e.g., sales invoices, consignment agreements, online visitor agreements, privacy policies, loan agreements, etc.). To the extent there is any conflict between these terms and conditions and other more specific agreements you have signed with Manheim, those other more specific agreements will control. Manheim may amend these terms any time by posting an amended version at its website, which shall become effective on the date of posting. Time is of the essence with respect to all of your duties hereunder.

2. Accuracy of Information: You certify and agree that all registration and representative information you have provided to us, via AuctionACCESS and otherwise, is true, correct, and complete, and you will promptly notify us in writing, via AuctionACCESS, if there is any change to the information you have provided.

3. Fairness and Courtesy: You agree to behave in a fair, ethical, courteous, and civil manner in your interactions with us, our personnel, and our other customers while participating in any Manheim auction or when otherwise using any of Manheim's services. Should you have issues or concerns with the behavior of our personnel or other customers while attending any Manheim auction that cannot be resolved quickly and civilly on your own, you will raise those issues discreetly with our management.

4. Dealer Only: With limited and specifically-advertised exceptions, our sales are dealer-only wholesale auctions open only to pre-registered and pre-approved licensed motor vehicle dealers, banks, manufacturers, and other commercial buyers and sellers. Curbstoning is strictly prohibited. You agree not to bring any actual or prospective retail buyers to Manheim, or to give them access to Manheim's online portals, or to negotiate or consummate any retail transactions on or adjacent to any of our property. You further agree not to appoint any representatives to act on your behalf who are not bona fide agents of your dealership. You also represent to us that your wholesale transactions with us are exempt from any state sales or other taxes and agree that you, and not Manheim, are responsible to pay any such taxes on your related or subsequent transactions.

5. Bidding: Unless announced otherwise during the sale, all units are sold with reserve, and the

<http://publish.manheim.com/en/marketplace-policies/us-policies/manheim-terms-and-conditions.html>

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J. Bidding. UNLESS ANNOUNCED OTHERWISE DURING THE SALE, ALL UNITS ARE SOLD WITH RESERVE, AND THE auctioneer may bid up to the reserve. Seller bidding and use of bids are strictly prohibited. Bidders should remain aware and satisfy themselves as to a unit's condition and value before bidding and bring any incidents of improper bidding to management's attention immediately at the close of bidding on a unit. Otherwise, participants ratify the auction of the unit.

6. Terms of Sale: You agree to the following terms of sale for each vehicle you buy or sell through Manheim ("Vehicle"), as well as Manheim's vehicle arbitration policy:

a. Buyer is the transferee and agrees to purchase the Vehicle; Seller is the transferor and agrees to sell the Vehicle. Manheim is merely the auctioneer or facilitator in the transaction and expressly disclaims any and all express and/or implied warranties as to merchantability, fitness for a particular purpose, or any other matter whatsoever with respect to a Vehicle, other than the limited title guarantee set forth below. You acknowledge and agree that you are a sophisticated commercial party and agree to satisfy yourself as to the condition and value of a Vehicle and the terms of any bid before bidding or selling. You further agree to look to the counter-party Buyer or Seller (as applicable) in such a transaction, and not Manheim, for any legal claims falling outside your rights under the Manheim Arbitration Policies.

b. Any adjustments or rejections must be raised the day of sale and resolved prior to settlement. Vehicles must be paid for on the day of purchase, or the sale may be considered null and void at Manheim's discretion.

c. Vehicles shall be removed from Manheim premises no later than the sixth (6th) day following the date of sale, and thereafter, Manheim may charge a reasonable daily storage fee of up to \$25 per day should any Vehicle be left on Manheim premises.

d. Title to a Vehicle does not pass to Buyer until good funds are received. Buyer grants Manheim a security interest in each Vehicle to secure payment of the purchase price and of any other debt owing from Buyer to Manheim or its affiliates. You agree that Manheim may resell any Vehicle, if retained or repossessed, at a regular Manheim sale or through any affiliated sale, including Manheim's online sales channels, which are established commercially reasonable markets for the sale of motor vehicles.

e. Buyer agrees:

i. to purchase the applicable Vehicle for the purchase price established by the auctioneer and shown on the bill of sale;

ii. before settling for such Vehicle, to check the serial and/or engine numbers on such Vehicle with those on the title and to check the actual condition of such Vehicle with its description and with the announcements and Seller disclosures, if any;

iii. not to resell such Vehicle until good funds have been transmitted to Manheim;

iv. upon making settlement, regardless of payment method, to consider the sale a fully consummated cash transaction for present consideration;

v. that no stop payment of any Buyer check to Manheim shall be honored;

vi. that any stop payment order of a check/draft or giving a check/draft which is returned unpaid shall be deemed to be evidence of fraud existing at the time of payment and shall be construed as

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an intent to defraud in order to obtain the Vehicle and/or its title;

vii. that Manheim may deposit any check or draft immediately upon receiving it, regardless of whether such Vehicle's certificate of title has been submitted by Seller or whether Buyer has asked Manheim to hold the instrument;

viii. to make any claim of defects in such Vehicle with Seller, who shall be solely responsible for those claims, and to immediately notify Manheim of such claims pursuant to its policies;

ix. that Buyer will comply with Subsection 6(c) above with respect to removal of Vehicles from Manheim's premises and payment of daily storage fees; and

x. that Buyer is responsible for Buyer's own transportation of such Vehicle.

f. You represent to Manheim that you are solvent, that you are a licensed motor vehicle dealer in good standing or otherwise authorized to sell or buy on a commercial wholesale basis in the relevant jurisdiction(s), and that any Vehicle you purchase is purchased solely for resale.

g. Seller represents and promises that Seller is the true and lawful owner of the Vehicle being sold; that the Vehicle is free from all liens and encumbrances; that Seller has good right and full power and authority to sell and transfer title to the Vehicle; and that Seller will warrant and defend the Vehicle against the claims and demands of all persons whomsoever.

h. You agree that any amounts owing to Manheim may be deducted from any proceeds due to you and that Manheim may stop payment or refuse to authorize payment on any check or draft to you pursuant to this right of setoff. Manheim may hold any of your property in Manheim's possession for a reasonable period of time pending any odometer fraud, VIN-switch, or similar investigation.

i. Seller acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to any Vehicle on the invoice for such Vehicle and/or on the certificate of title for such Vehicle.

j. Upon payment to Seller, Manheim shall be subrogated to all of Seller's and Buyer's respective rights, and Seller and Buyer agree to promptly take any action or sign any document deemed necessary, in Manheim's sole discretion upon Manheim's request, to secure such rights and do nothing to prejudice them.

k. **Limited Title Guarantee:** Upon full payment by Buyer and upon delivery of the certificate of title of Vehicle to Buyer, Manheim will guarantee title to be free and clear of liens and encumbrances as of such delivery as, and only as, follows:

i. This limited guarantee shall last for a period of four (4) years from the date of sale and applies only to stolen Vehicles and mortgage liens. **The amount of Manheim's liability under this limited guarantee of title shall never exceed the auction sale price of the Vehicle** and shall be reduced by deducting from said sale price two percent (2%) on the first of each month following the date of sale, with all liability of Manheim expiring and terminating on the first day of the 48th month after that date.

ii. Manheim's limited guarantee of title is expressly limited to Buyer of the applicable Vehicle and is not negotiable or transferable. The limited guarantee shall be void if the purchase price for the Vehicle is not paid by Buyer, and it does not protect against defects in the title known to Buyer whether or not listed as exceptions on the face of the invoice for such Vehicle.

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iii. Whenever any claim is made by any person against the title of any Vehicle, whether by suit or otherwise, Buyer must, within five (5) days after becoming aware of said claim, notify Manheim, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss. Failure to satisfy these conditions shall void Manheim's liability under this limited guarantee.

iv. Buyer shall not surrender possession of any Vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, in each case without the prior written approval of Manheim.

v. On payment of any claim under this limited guarantee, Buyer will return the applicable Vehicle to Manheim, if and as requested, and execute all necessary documentation subrogating its right to recover against Seller, or others, to Manheim.

I. Disclaimers and Indemnification

i. You agree that Manheim is neither responsible for odometer mileage on any Vehicle nor for the information contained in the odometer mileage statement which Seller, as Transferor, is required to complete and deliver, and Buyer, as Transferee, is required to acknowledge.

ii. You agree that all representations or disclosures concerning any Vehicle are solely the responsibility of Seller, whether made on the block, before the sale, or otherwise, and you acknowledge and agree that Manheim has made no representations or disclosures whatsoever about any Vehicle.

iii. Manheim is merely performing an auction service and expressly disclaims all express and/or implied warranties as to merchantability, fitness, or any other matter whatsoever, other than the limited title guarantee set forth above.

iv. You agree, jointly and severally with any Buyer or Seller (as the case may be), to indemnify and hold Manheim harmless from and against any and all liability, loss, cost, damage, or expense, including attorneys' fees, which are in any way related to or may otherwise arise, either directly or indirectly, from any Vehicle, including, but not limited to, the purchase or sale of any Vehicle, any matters relating to odometer mileage or odometer mileage statements, any damage or condition disclosures or lack thereof, and/or any damage caused by transporters or other agents of either Buyer or Seller.

v. If Manheim is required to make or defend a claim, related in any way to a Vehicle or Vehicle transaction, from or against either Seller or Buyer or an agent, employee, insurer, or bonding company of either, then Manheim shall recover, in addition to the amount of the claim and the costs incurred in the claim, reasonable attorneys' fees in an amount not less than twenty-five percent (25%) of the amount of the claim, regardless of whether suit is filed, including appellate and bankruptcy fees and costs. Interest shall accrue on the unpaid balance of any such claim at the rate of one and one-half percent (1.5%) per month, or the highest rate permitted by law, whichever is greater.

m. You acknowledge and agree that any Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by you for resale. In the event that any Vehicle is used for any purpose other than for resale, you will pay directly to the proper taxing authorities such sales or use tax as may then be accrued and become

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payable. As a Buyer, you further certify that you hold a retail sales tax registration certificate, license, or other permit, issued by the sales taxing authority of your state, county, and/or country, as appropriate.

n. If the Vehicle is purchased "for export only" or equivalent, you will transport it out of the country and not re-sell it domestically.

o. MANHEIM RESERVES THE RIGHT TO VOID, UNWIND, OR CANCEL ANY TRANSACTION IN ITS SOLE DISCRETION.

7. Vehicle Arbitration Rules: You agree and acknowledge that:

a. you have received and read a copy of our prevailing National Auto Auction Association Arbitration Policy, including any Manheim addendums, and the Manheim \$3,000 & Under Arbitration Policy, each of which are available at www.manheim.com/market_policies (collectively, the "Manheim Arbitration Policies");

b. you understand and are bound by the Manheim Arbitration Policies, which may be amended unilaterally by us from time to time, when participating in any transactions at Manheim; and

c. any dispute arising from the purchase or sale of a vehicle through Manheim will be resolved in accordance with the Manheim Arbitration Policies, which are incorporated herein by reference and as may be amended from time to time by posting on Manheim's website, and our decision as arbitrator shall be final and binding upon you with respect to any transaction.

8. Payments: Payments for goods or services must be made by the registered customer purchasing those goods or services or a pre-established direct floor planner acting on that customer's behalf. Although we retain the discretion to make appropriate exceptions, other third-party payments generally will not be accepted. Payments must be made in good funds and in a form acceptable to Manheim. Manheim reserves the right, in its sole discretion, to change the forms and types of payment that are accepted by Manheim. In addition to any other rights Manheim may have, you agree to pay a late fee of one percent (2%) on any unpaid obligations to Manheim, subject to a \$5 minimum and \$150 maximum. Manheim may waive the fee in its sole discretion.

9. ACH Authorization: You agree that, if you designate a bank account for payment of amounts you owe us, including, but not limited to, by adding a bank account to your online profile, we may use such account information to initiate an ACH debit to your bank account for such amounts owed. Additionally, you agree that, if any ACH debit we initiate to your bank account is returned unpaid, we may debit your account for a returned item fee in the maximum amount permitted under applicable state law. You agree that any authorizations we initiate to your bank account must comply with applicable law and NACHA Operating Rules. This authorization is in addition to, and does not terminate, any other authorization for electronic or ACH payments that we have on file or that you provide us in the future.

10. Electronic Signatures: You acknowledge and agree that you and we may, from time to time, find it expedient to utilize electronic signature(s), acknowledgement(s), consent(s), "click-through(s)," or other approval(s), direct or indirect, for access to auctions, bills of sale, receipts, titles, and other documents or disclosures necessary or incidental to the transaction of business at Manheim, whether online, in emails, at the check-in kiosk, on the auction block, at security, or otherwise, which makes your business with us easier, faster, and more efficient. To that end, you agree that any such forms of approval from you shall be effective and binding upon you, in the same manner

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as a handwritten signature, where circumstances indicate your intent to be bound and/or we choose to rely on such approval(s). Regardless of whether your consent or approval was given, or in what form, you agree that you will be deemed to have ratified any transaction that you do not dispute in writing within 24 hours of confirmation by Manheim.

11. Transportation of Vehicles: We may, from time to time in our discretion, transport or arrange via third parties to transport vehicles belonging to you at your request and/or as deemed necessary or desirable by us. In such cases, we are not liable for theft, conversion, loss, injuries, damage, claims, expenses (including legal fees), suits, or demands related to such vehicles (collectively, "Transportation Claims"), howsoever caused and to whomever caused. Such vehicles are being transported for you and at your request, and you assume all risks associated with the transportation of your vehicles. You further acknowledge and agree that your only claim or remedy for Transportation Claims, if any, shall be to and against the third-party carrier, its insurer, your own insurer, or the third-party that caused the alleged damage, and not to, against, or involving us.

12. Off-Site Sales: For any vehicles physically located away from a Manheim facility when auctioned online, the seller shall have three (3) business days, inclusive of the sale date, to make the vehicle available to the buyer. The risk of loss or damage to the vehicle shall shift from the seller to the buyer upon the earlier of (i) actual pick-up by the buyer or its agent; or (ii) two (2) business days after seller truthfully notifies the buyer the vehicle is available for pick-up at the location stated in the sale listing.

13. Storage of Vehicles: Unless expressly agreed to the contrary in a writing signed by us, we are not a bailee of your property, consigned or otherwise. If you leave your vehicles or other property unattended on our premises, regardless of the reason, you are solely responsible for any and all damage, theft, or loss relating to such property, including any damage caused by weather conditions, regardless of our knowledge or involvement, and we may charge you storage fees as provided above in Section 6.

14. Safety and Assumption of Risk: Like all auto auctions, our various facilities are busy places with many vehicles, customers, and personnel moving around the premises at all times, particularly during sales events. You understand and acknowledge that the movement of vehicles, equipment, and individuals at our facilities constitutes an open and obvious condition and that Manheim is not obligated to warn you of such conditions. You agree to obey posted signs and follow any warnings you receive from our personnel, particularly as they relate to safety and security issues. You also agree to use extreme care while on our premises to avoid injury to yourself and others, both in moving vehicles on and off the premises and in traversing any sale lanes, parking lots, and offices on foot and otherwise. By entering our private premises, you assume the risk of injury.

15. Bound by Representatives: You are responsible for and bound by the actions of, and transactions entered into by, your actual and appointed representatives, including (i) all persons who, from time to time, submit a completed Individual Authorization Letter to Manheim or to AuctionACCESS signed by or for you; and (ii) any other person authorized by you in writing, verbally, or otherwise to represent you at or with Manheim. You are responsible for monitoring your appointed representatives and protecting the privacy of your username, login information, and AuctionACCESS number and/or card and agree to inform us immediately, in writing, of any unauthorized use of same. If you are checking in or logging in as a representative for a dealership other than your own, you agree that you are a duly appointed and authorized representative for that dealership and have authority to bind that dealership to any actions or transactions you conduct.

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16. No Right to Do Business: You have no obligation to do business with us. Likewise, you agree and acknowledge that we have no obligation to do business with you. We are affiliated private businesses; we reserve the right to cease doing business with you or anyone else, at any time, for any reason or no reason, in our sole discretion, collectively or separately among our affiliates; and you shall have no right, remedy, or cause of action for same. You acknowledge and agree that there are numerous sources, other than Manheim, for you to acquire and sell used motor vehicles.

17. Information Sharing: You authorize us to pull, gather, obtain, receive, share, disseminate, and disclose financial, credit, and transactional information about you in our discretion, including, without limitation, consumer reports, credit histories and limits, buy and sell histories, check information, collateral location and status, and eligibility status (for purposes of this paragraph, "Your Information"), from and with credit bureaus, financial institutions, trade creditors, affiliates and third parties, including without limitation AuctionACCESS, Auction Insurance Agency, other auction companies, marketing partners, and other customers, for any reason we deem necessary, including, without limitation, assessing your creditworthiness, collecting any outstanding debt you may owe now or in the future, and obtaining intercreditor, subordination, or similar agreements related to you; and you hereby ratify any such prior acts. The information sharing authorized herein is in addition to any information sharing authorized in any Manheim privacy policy. You may opt out of allowing your consumer report (if any) to be shared among our affiliates or disseminated or disclosed for marketing purposes (only) by writing to Manheim, ATTN: Credit Bureaus, 400 Northridge Road, Suite 800, Atlanta, Georgia 30350.

18. Contributions to Manheim: You agree and acknowledge that by submitting ideas, suggestions, concepts, documents, and/or proposals ("Suggestions") to Manheim, that:

- a. you have all necessary rights to share such Suggestions with Manheim and that the Suggestions are not subject to restrictions by third parties;
- b. Manheim is free to use and/or share such Suggestions as it sees fit;
- c. Manheim may have already conceived, contemplated, or developed something similar to the Suggestions;
- d. Manheim may incorporate the Suggestions into its products and services, now or in the future, and Manheim does and will own such products and services; and
- e. Manheim is not obligated to you in any way for such Suggestions.

19. Manheim's Proprietary Rights: You agree and acknowledge that Manheim's products and services, and any software used in connection with Manheim's products and services, and the materials on the various Manheim websites, contain proprietary and confidential information that is protected by intellectual property and other laws. Further, you agree and acknowledge that in the performance of its services, Manheim may generate materials, including, but not limited to, photographs, reports, visuals, narratives, transactional records, and other data and documents derived from the foregoing, and that Manheim shall own the rights to such materials. Except as explicitly provided in these terms and conditions, you may not take, appropriate, convert, distribute, transmit, display, reproduce, modify, create derivative works from, or otherwise exploit any of the Manheim generated materials. Manheim owns many trademarks and service marks, including, but not limited to, the registered marks Manheim.com, OVE, and OVE.com. You may not use any Manheim trademark or service mark without Manheim's prior written consent.

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Manheim Terms and Conditions

20. Limited Power of Attorney: For value received, you hereby irrevocably appoint Manheim to be your agent and attorney-in-fact with full and complete authority to, on your behalf, take all steps, do all things, and authenticate, sign, e-sign, or otherwise acknowledge any and all documents, including but not limited to odometer disclosure statements, title documents (including applications for duplicates), sales invoices and transportation instructions/orders, in each case as deemed necessary, incidental, desirable, or expedient by us, in our sole judgment, to any goods and/or services provided by us to you and/or to assist us with our efforts to collect payment for such goods and/or services. You will also sign any separate power of attorney document(s) covering the foregoing activities and authority that Manheim may request from time to time in its sole discretion.

21. DISCLAIMER OF WARRANTIES: UNLESS OTHERWISE SPECIFICALLY SET FORTH HEREIN OR IN A MORE SPECIFIC AGREEMENT YOU MAY HAVE OR MAKE WITH MANHEIM, ALL PRODUCTS AND SERVICES PROVIDED TO YOU BY MANHEIM ARE ON AN "AS-IS" BASIS. MANHEIM CANNOT AND DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY PRODUCTS OR SERVICES PROVIDED TO YOU BY MANHEIM, AND CANNOT GUARANTEE THAT ANY SERVICES PROVIDED TO YOU WILL BE ERROR FREE, OR CONTINUOUSLY AVAILABLE, OR THAT SUCH SERVICES WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

22. INDEMNIFICATION: YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS MANHEIM, ITS SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, MEMBERS, REPRESENTATIVES, BORROWED SERVANTS, VOLUNTEERS, INDEPENDENT CONTRACTORS AND AGENTS (EACH, A "MANHEIM PARTY" AND COLLECTIVELY, THE "MANHEIM PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, CAUSES OF ACTION, DEBTS, OR LIABILITIES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO:

- a. ANY PERSONAL INJURY OR PROPERTY DAMAGE THAT YOU MAY CAUSE, EITHER SOLELY BY YOUR OWN ACTIONS OR JOINTLY WITH OTHERS (INCLUDING THE MANHEIM PARTIES), TO MANHEIM, ANY PERSONNEL OR CUSTOMERS OF MANHEIM, OR ANY THIRD PARTIES, OR THE PROPERTY OF ANY OF THE FOREGOING;
- b. THE BREACH OR ALLEGED BREACH OF ANY AGREEMENT OR OBLIGATION HEREUNDER OR UNDER ANY OTHER AGREEMENT THAT YOU MAY HAVE WITH MANHEIM;
- c. ANY TRANSPORTATION CLAIMS;
- d. ANY ACTIONS THAT A MANHEIM PARTY MAY TAKE AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 20 HEREOF OR OTHERWISE;
- e. YOUR USE OF ANY PRODUCTS OR SERVICES OF MANHEIM; AND
- f. ANY LIABILITY OR OBLIGATION, INCLUDING ANY CAUSED IN PART BY A MANHEIM PARTY, THAT MAY OTHERWISE ARISE FROM YOUR PARTICIPATION IN ANY SALE OR AUCTION CONDUCTED BY A MANHEIM PARTY, YOUR PRESENCE AT ANY PREMISES OWNED OR OPERATED BY MANHEIM, OR THE PROVISION OF PRODUCTS OR SERVICES TO YOU BY MANHEIM.

23. WAIVER AND RELEASE OF LIABILITY: YOU HEREBY WAIVE ANY CLAIM OR CAUSE OF

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ACTION THAT YOU MAY HAVE, EITHER NOW OR IN THE FUTURE, AGAINST ANY MANHEIM PARTY, AND HEREBY RELEASE THE MANHEIM PARTIES FROM ANY AND ALL LIABILITY UNDER SUCH CLAIM OR CAUSE OF ACTION, IN EACH CASE TO THE EXTENT SUCH CLAIM OR CAUSE OF ACTION ARISES FROM OR RELATES TO:

- a. YOUR ENTITLEMENT TO THE PROTECTION OF ANY CONSUMER PROTECTION STATUTE;
- b. ANY BIDDING OR DISCLOSURE ISSUES THAT MAY OCCUR AT A SALE OR AUCTION CONDUCTED BY US, SUBJECT TO YOUR LIMITED RIGHTS UNDER THE MANHEIM ARBITRATION POLICIES;
- c. ANY TRANSPORTATION CLAIM;
- d. ANY DAMAGE TO YOUR VEHICLES OR OTHER PROPERTY LEFT OR STORED ON ANY PREMISES OWNED OR OPERATED BY MANHEIM, REGARDLESS OF COMPENSATION PAID TO US FOR SUCH STORAGE;
- e. ANY PERSONAL INJURY OR OTHER PROPERTY DAMAGE SUFFERED WHILE ON OR AROUND ANY PREMISES OWNED OR OPERATED BY MANHEIM; AND
- f. ANY ACTIONS TAKEN BY A MANHEIM PARTY AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 20 HEREOF OR AS MAY OTHERWISE BE AUTHORIZED.

24. LIMITATIONS OF LIABILITY: UNDER NO CIRCUMSTANCES WILL THE MANHEIM PARTIES BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUES OR PROFITS, OR DAMAGES FOR LOSS OF BUSINESS), EVEN IF ONE OR MORE OF THE MANHEIM PARTIES ARE ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THE AGGREGATE LIABILITY OF THE MANHEIM PARTIES, COLLECTIVELY, TO YOU IN CONNECTION WITH ANY CLAIMS OR CAUSES OF ACTION THAT YOU MAY ASSERT, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY YOU TO MANHEIM FOR THE PRODUCT(S) OR SERVICE(S) AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION BEING ASSERTED. BECAUSE SOME STATES/JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.

25. Choice of Law and Consent to Jurisdiction: These terms and conditions shall be governed by the internal laws of the State of Georgia (U.S.A.), where Manheim maintains its headquarters, and without regard to Georgia's internal conflicts of law analysis. In the event that any claim or dispute between Manheim and you is not arbitrated under Section 26 hereof, you agree that non-exclusive jurisdiction and venue for such claims and disputes shall exist in the federal and state courts located in Fulton County, Georgia. You further agree and acknowledge that you may not sue Manheim in any jurisdiction or venue except Fulton County, Georgia.

26. ARBITRATION AND CLASS ACTION WAIVER

- a. **ARBITRATION AGREEMENT: YOU AGREE TO ARBITRATE ANY DISPUTE OR CLAIM THAT YOU MAY HAVE WITH MANHEIM THAT ARISES OUT OF OR RELATES IN ANY WAY TO THESE TERMS AND CONDITIONS; ANY PURCHASE, SALE, OR OTHER AUCTION OR CREDIT**

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TRANSACTION WITH MANHEIM; YOUR USE OF ANY MANHEIM WEBSITE, ONLINE PORTAL OR ANY MANHEIM PRODUCT OR SERVICE; OR ANY OTHER AGREEMENT BETWEEN YOU AND MANHEIM. ARBITRATION CONDUCTED HEREUNDER SHALL BE FINAL AND BINDING.
THIS ARBITRATION PROVISION MEANS THAT YOUR CLAIMS AGAINST MANHEIM WILL BE RESOLVED THROUGH ARBITRATION RATHER THAN LITIGATION IN COURT. YOU ACKNOWLEDGE THAT MANHEIM MAY (BUT SHALL NOT BE REQUIRED TO) SUBMIT TO ARBITRATION ANY DISPUTE OR CLAIM THAT IT MAY HAVE AGAINST YOU, WITH ANY SUCH ARBITRATION BEING GOVERNED BY THE PROVISIONS OF THIS SECTION 26.

b. **ABILITY TO OPT OUT:** YOU MAY OPT OUT OF THIS ARBITRATION AGREEMENT (SECTION 26 ONLY) FOR ANY FUTURE BUSINESS WITH MANHEIM AND DOING SO WILL NOT IN ANY WAY PREJUDICE OR AFFECT YOUR DEALINGS WITH MANHEIM. TO EXERCISE THIS OPT OUT RIGHT, YOU MUST PROVIDE WRITTEN NOTICE OF YOUR ELECTION TO OPT OUT TO MANHEIM AT MANAGER, LICENSING AND ADMINISTRATION, 6205 PEACHTREE DUNWOODY ROAD NE, ATLANTA, GA, 30317 NO LATER THAN 30 DAYS AFTER YOUR INITIAL ACCEPTANCE OF THESE TERMS AND CONDITIONS AS SET FORTH IN THE FIRST PARAGRAPH HEREOF. THE PROCEDURE SPELLED OUT HEREIN IS THE ONLY WAY TO OPT OUT OF THIS ARBITRATION AGREEMENT, AND ANY ATTEMPTS TO OPT OUT AFTER THE DEADLINE SET FORTH HEREIN WILL BE INEFFECTIVE.

c. **CLASS ACTION WAIVER:** ANY ARBITRATION PROCEEDING UNDER THIS SECTION 26 WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS AND CLASS OR REPRESENTATIVE PROCEEDINGS OF ANY KIND ARE NOT PERMITTED AND YOU EXPRESSLY WAIVE YOUR ABILITY TO PARTICIPATE IN A CLASS OR REPRESENTATIVE PROCEEDING AGAINST MANHEIM. TO THE EXTENT THAT YOU OPT OUT OF ARBITRATION FOLLOWING THE PROCEDURE SET FORTH IN SECTION 26(b) ABOVE, OR IF THIS ARBITRATION AGREEMENT IS FOUND INAPPLICABLE TO YOUR DISPUTE WITH MANHEIM, THIS CLASS ACTION WAIVER WILL CONTINUE TO APPLY IN LITIGATION. YOU AGREE THAT THIS CLASS ACTION WAIVER IS AN ESSENTIAL ELEMENT OF OUR AGREEMENT AND THESE TERMS AND CONDITIONS AND THAT IT MAY NOT BE SEVERED. IN THE EVENT THAT THIS CLASS ACTION WAIVER IS DEEMED INVALID OR UNENFORCEABLE, THEN THE ENTIRE AGREEMENT TO ARBITRATE IN THIS SECTION 26 WILL BE NULL AND VOID.

d. **Arbitration Procedures/Arbitrator Authority:** Any dispute or claim subject to arbitration pursuant to this Section 26 shall be submitted to binding arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS") pursuant to its Streamlined Arbitration Rules and Procedures as in effect at the time of the submission of such dispute or claim (the "JAMS Streamlined Rules"). The disputes and claims subject to arbitration pursuant to this Section 26 will be resolved by a single arbitrator selected pursuant to the JAMS Streamlined Rules. The arbitrator shall be bound by and shall strictly enforce these terms and conditions and any other applicable agreement between you and Manheim, and may not limit, expand, or otherwise modify any of these terms and conditions or the provisions of any other applicable agreement between you and Manheim. The arbitrator may award any relief that a court of law could, applying the limitations of liability contained in these terms and conditions. The arbitrator may award injunctive relief if permitted by law - but the injunctive relief awarded by the arbitrator may not extend beyond our dealings with each other. The laws of the State of Georgia will apply to any claims or disputes between us. Any arbitration will be held in Atlanta, Georgia, unless otherwise agreed upon by the parties in writing. Each party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator shall award Manheim any costs and fees to which Manheim may be entitled under Section 21 in connection with any indemnification

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~~THIS TO WHICH THIS AGREEMENT MAY BE CHANGED UNDER SECTION 26 IN CONNECTION WITH ANY ARBITRATION~~
claim, and may also, in his or her discretion, award costs and fees to Manheim if it is determined that you submitted or filed any arbitration in bad faith or that your claims against Manheim have no reasonable legal basis.

e. Application of FAA/Survival: You agree that your transactions with Manheim evidence transactions in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Section 26 (notwithstanding the application of Georgia law to any underlying claims as provided for in clause (d) above). You also agree that this Section 26 survives any termination of these terms and conditions or any other agreement between us.

27. Individual Guaranty: By entering our private facilities and/or using our services, you personally guarantee full payment and performance of all the obligations you participate in incurring to Manheim, whether personally or as a representative of another entity, despite the fact that you may be participating in a representative capacity. The principal debtor is (i) any Vehicle Buyer or Seller for whom you (a) are a registered owner with AuctionACCESS or (b) consent to a Manheim bill(s) of sale, and (ii) any customer for whom you order a product or service from us. Liability under this general guaranty is in addition to your dealership's liability and is joint and several with the dealership's liability. This is a general guaranty of payment and performance and not merely a guaranty of collection.

28. Communications: You hereby expressly authorize us to communicate with you via facsimile transmissions, email, telephonic transmissions, both to a residential telephone line and/or cell phone, including text messaging, using an automatic telephone dialing system or an artificial or prerecorded voice message, and/or any other forms of communication, for any purpose, including general business matters, account information, marketing materials, collection, and/or any other communication needs. Such express permission shall extend to any and all of the contact information that you have provided to us herein or otherwise, including physical and email addresses, phone numbers, fax numbers, etc., and to such other addresses, phone numbers, email addresses, online chat, social media platforms, etc. that you may provide to us, or that we may obtain from any third party at a later date. You are not required to consent to receive marketing calls and texts to your cell phone and/or residential line using an automatic telephone dialing system or an artificial or prerecorded voice message from us as a condition of your access to Manheim, and you may opt out of receiving such communications by adjusting your account settings at www.manheim.com.

29. No Commitment to Lend: Neither these terms and conditions nor any other request by you to us shall constitute a commitment by us to lend funds to you or to take any other action. We may approve any request for floor plan or other financing in our sole discretion, with or without notice to you.

30. Manheim Policies: You also agree to abide by any applicable Manheim Marketplace Policies or other location-specific policies of Manheim, as amended from time to time, including without limitation Manheim's privacy policy, website visitor agreements, post-sale inspection policy, sale day check policy, and OVE.com priced right policy. The current list and terms of Manheim's national policies can be found at: www.manheim.com/market_policies.

31. Understanding of Terms and Conditions: You acknowledge and agree that you understand these terms and conditions written in English and that you have sought the help of an attorney and/or translator as you deem necessary to understand it. The Parties hereto agree that this agreement, and all correspondence and all documentation relating to this agreement, be written in <http://publish.manheim.com/en/marketplace-policies/us-policies/manheim-terms-and-conditions.html>

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Manheim Terms and Conditions

the English language. (Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.) Any translated version of any of these terms and conditions offered by Manheim is provided as a courtesy only, with the English version being the binding version.

32. Severability: In the event that any provision in this agreement is determined to be legally unenforceable, the parties agree that the unenforceable provision shall be severed, and the remaining provisions of these terms and conditions shall remain in full force and effect.

33. Electronic Approval: You hereby acknowledge and agree that these terms and conditions are being executed both in your individual capacity and in your capacity as an authorized representative for Dealer and that the approval of this document, if by e-signature, shall be deemed to satisfy all requirements imposed on electronic or digital signatures under the Electronic Signatures in Global and National Commerce Act (the "E-Sign Act"), 15 U.S.C. §7001(a) .. state electronic transactions acts, and any other similar laws relating to the validity or enforceability of electronic or digital signatures. You further acknowledge and agree that these terms and conditions may be approved by affixing to this agreement an electronic or digital signature, which shall for all purposes be deemed effective to constitute the valid signature of the party affixing such electronic or digital signature.

English| Français |Español

Le présent Contrat est traduit en français uniquement à titre de courtoisie. En cas de dé'accord avec la version anglaise, cette dernière prévaudra.

Conditions générales de Manheim

Mise à jour: le 17 septembre 2015

Bienvenue chez Manheim, premier fournisseur mondial de services de revente de véhicules. En assistant à l'une des ventes aux enchères de Manheim ou en utilisant l'un de ses services, que ce soit dans un emplacement de Manheim ou en ligne, vous convenez, tant pour vous que pour votre concession, votre entreprise et vos représentants (collectivement, « vous »), de respecter les conditions suivantes, telles que modifiées le cas échéant par Manheim :

1. Manheim: Ces conditions générales profiteront à Manheim, Inc. et à ses différentes filiales et sociétés affiliées, dont les ventes aux enchères d'automobiles de Manheim, Cox Automotive, Inc. et d'autres (collectivement, « Manheim », « nous », « notre » ou « nos »). Ces conditions générales s'ajoutent à toute autre convention précise que vous avez établie avec Manheim, mais ne la remplacent pas (p. ex., factures de vente, ententes de vente en consignation, ententes de visiteurs en ligne, politiques de confidentialité, conventions de prêt, etc.). En cas de conflit entre ces conditions générales et d'autres ententes plus précises que vous avez signées avec Manheim, ces ententes plus précises l'emporteront. Manheim est susceptible de modifier les présentes conditions à tout moment en en affichant la nouvelle version sur son site Internet; les conditions ainsi modifiées entreront en vigueur dès leur affichage. Le temps est un élément essentiel en ce qui concerne l'ensemble de vos obligations en vertu des présentes